

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1645 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

AMARBEN KALABHAI

Versus

DY EXECUTIVE ENGINEER

Appearance:

MS DT SHAH for Petitioners

MR DA BAMBHANIA for Respondent No. 1

SERVED for Respondent No. 2, 3, 4, 5

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 01/04/97

ORAL JUDGEMENT

1. This petition is by two persons awaiting consideration of their application for fixing retiral benefits after they superannuated in 1989. From the perusal of the petition and documents submitted along with it, it appears that petitioners were initially appointed on work charge establishment of State Road and

Building Department at Joywa in Jamnagar District. Thereafter by one order dated 15.10.1975, passed at the instance of the Department directions dated 15.10.1975, in the first instance services of the petitioners were terminated w.e.f. 20.10.75 and by another order of the same date, they were reappointed with effect from 21.10.1975. According to the petitioners the incumbents have since that time continued in service until they were superannuated on work-charge establishment in 1989. By resolution of the Government of Gujarat, (Annexure H), the work charged employees under the Public Works Department, now Roads and Buildings Department (excluding Panchayats and Ports) who had completed five years' continuous service on work charged and temporary establishment or permanent establishment and who have retired on or after 8.1.1976 are to be treated at par with persons on temporary establishment under Public Works Department, now Roads and Buildings Department in the matter of pensionary benefits and General Provident Fund scheme.

2. These facts have not been disputed. The case of the petitioners is that since then in spite of making representations to the concerned authorities, their pensionary benefits and other retiral benefits to which they were made entitled to under the aforesaid Government Resolution have not been determined and released.

3. It has also been urged in the petition that termination of service with effect from 20.10.1975 by order dated 15.10.1975 and reappointment by the order of the same date with effect from 21.10.1975 should not be treated as a break in service.

4. Having carefully considered the facts and circumstances of the case, I am of the opinion that so far termination order dated 15.10.1975 and reappointment order dated 15.10.1975 effective from 20.10.1975 and 21.10.75 respectively are part of the same transaction and cannot have the effect of break in service by this artificial methodology.

5. So far as the determination of pensionary benefits and other retiral benefits are concerned, the respondents competent authority is bound to consider the same within reasonable period and determine the amount of retiral benefits, if any, payable to the petitioners. Almost eight years have elapsed since the petitioners have superannuated and their cases for determination of pensionary benefits and other retiral benefits to which they are entitled remain to be paid. In fact petitioner

No.2 has since died and is now being represented by his legal representatives.

6. In these circumstances, this petition is allowed and respondents are directed to consider the case of the petitioners for pensionary benefits and retiral benefits to which they are entitled to in accordance with rules within a period of six weeks from today. Any amount found to be payable to the petitioners as a result of considering the petitioners' case for their retirement benefits should be paid within a further period of two months from the date of such determination. Furnishing of certified copy of this order by any of the parties would be sufficient notice of the order.

7. Rule is made absolute as stated above. No order as to costs. Direct Service permitted.